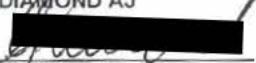


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: HCA 22/2024

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED: YES/NO
DIAMOND AJ	
	
SIGNATURE	DATE
	9/12/2025

In the matter between:

BATELINE INVESTMENT (PTY) LTD

1ST APPELLANT

KOEPHU BUSINESS ENTERPRISES

2ND APPELLANT

And

NEDTEX CC RESPONDENT

RESPONDENT

CORAM: NADE _ ODENDAAL J and DIAMOND AJ

JUDGMENT

DIAMOND A J:

[1] Approximately the end of 2019/beginning of 2020, the Polokwane Municipality appointed the First and the Second Appellants to execute certain construction and building works at a project called The Bloodriver and Seshego Wellfields (Polokwane Groundwater)(the "Main Project").

[2] The First and Second Appellants formed a joint venture, and I will refer to this joint venture simply as Bateline.

[3] Bateline appointed the Respondent as a subcontractor to perform certain work that was necessary for the construction of the Main project. I will refer to the Respondent as Nedtex.

[4] Nedtex issued summons against Bateline for the payment of the balance outstanding, in which it alleges Bateline still owed to Nedtex a balance of the contract amount, after Nedtex had fully performed in terms of the contract between Bateline and Nedtex.

[5] The Magistrate's Court of Polokwane, held at Polokwane, gave judgment in favour of Nedtex on the 18th of June 2024.

[6] It is against this judgment that the Appellant Bateline appealed, and the appeal came before us on the 22nd of August 2025.

[7] It is apposite at this stage to refer to the pivotal clause in the Particulars of Claim on which the Plaintiff relied:

*"5.1 One(sic) or about 15 June 2020 at or near Polokwane, Limpopo, the plaintiff represented by Mrs. Rajaina Masangu was appointed by the First Defendant, which at material times was represented by Mr. M P Madisha, as a subcontractor to render certain services. The appointment letter is attached here to marked **"NED1A"**.*

5.2 The relevant terms of the appointment were to render and/or perform certain earthworks/construction work in terms of an agreed bill of quantities (BOQ) services which included, but were not limited to:

- 1. Site clearance*
- 2. Water mains*
- 3. Pipe trenching"*

[8] It is therefore necessary to take notice, at this stage, of the content of Annexure **"NEDW1A"**. Annexure **"NED1A"**, is the appointment letter which Bateline issued to Nedtex. It stipulates as follows:

"You are hereby appointed as a subcontractor for the amount of R841 267.55, including 15% VAT. For the above-mentioned project, based on the priced Bill of Quantities you submitted and agreed to upon discussion at the Letsokoane site offices of Bateline Investments (Pty) Ltd. The following rules and regulations will apply:

1.....

2.....

3 There will be one claim of payment per month, before the 18th of each month. You will be paid monthly after the measurement of your completed work."

[9] Annexure **"NEDW1"** is attached to the particulars of claim and is the full Bills of Quantity referred to in the appointment letter.

- [10] It is common cause between the parties that Nedtex completed the work.
- [11] It is also common cause between the parties that the Nedtex rendered three payment certificates to Bateline. There was partial payment of these payment certificates in the amount of at least R701 911.14. Nedtex now claims that the balance outstanding to it is an amount of R 210 800.95.
- [12] Bateline conceded that the work was finished but relies on clause number 3 referred to in paragraph [7) above, viz, that payment will only be made after measurements of the work.
- [13] The engineer who testified on behalf of Bateline testified that Nedtex never submitted certified measurements to Bateline, with the result that Bateline cannot effect payment to Nedtex.
- [14] To this argument of Bateline, the Honourable Magistrate responded as follows:

"[18] First, it is overly technical and ignores the context. It is trite that "A court must examine all the facts in order to determine what the parties intended, and it is due that whether or not the words of the contract are ambiguous or lack clarity. Words without context mean nothing."

[17] Second, first defendant furnished plaintiff with a completion certificate. On the evidence of First Defendant's own witness, the completion certificate is a clear indicator that the works were duly completed to the first defendant's satisfaction. Any argument to the contrary would not sense.

For instance, why would the completion certificate be issued if not to certify that the job has been satisfactorily completed?"¹

[15] On the basis of the above reasoning, the Magistrate gave judgement in favour of Nedtex.

[16] In my view, the Honorable Magistrate erred in several respects.

[17] It is undoubtedly true that context gives meaning to communication. In fact, if a statement is stripped of any context, it would be extremely difficult to assign any meaning to such a statement. This conclusion is based as much on logic as it is on legal precedent.

[18] The Honorable Magistrate, however, in my view, failed to consider the context of this litigation.

[19] It is common cause between the parties that the contract between Bateline and Nedtex was concluded within the context of South African construction law.

[20] The reference in paragraph 3 referred to in paragraph [7], viz that payment shall only be made after the measurement of completed work does carry significant meaning within the context of construction law.

¹ The honorable magistrate relies on the statement in paragraph 18 on the judgment *Novartis v Maphil* (20229/2014) [2015] ZASCA 111 (3 September 2015)

- [21] The fact that there is a Bill of Quantities that regulated the determination of the contract price is further evidence that the parties intended to include some kind of a measurement contract.
- [22] In construction law and practice, a contract can be concluded on the basis of a lump sum on one end, or on the basis of a re-measurement contract price, or on the basis of an ad - measurement contract price determination.
- [23] The question of a measurement contract as opposed to a lump sum contract can become very technical and carries very specific meaning in construction contracts and law. The definition and the content of these agreements are normally driven by standard form contracts prescribed by built industry institutions, such as the Institution of Civil Engineers.
- [24] A full discussion of the various types of contracts is beyond the scope of this judgment. For a discussion on this topic, see Du Plessis, H. & Oosthuizen, *Construction project management through building contracts, a South African perspective*².
- [25] In the event of a measurement contract, the initial contract documentation is based on a certain approximation of the

² Acta Structilia, Vol. 25, No. 1 (2018), pp. 155-186.

quantity of work that must be done. A contractor contracts by giving a rate, per fixed quantity, for the various works. However, it is explicitly agreed upon between the contractor and the construction owner that should the volume of work deviate from what was approximated in the contract documentation, the contract price will be adjusted to reflect the true measurements of the work indeed performed.

[26] In a measurement contract, the price mentioned on the contract documentation, functions as a framework for the rates application, the rate having been agreed upon in the Bills of Quantities. It does not constitute the final contract price.

[27] That the parties indeed intended to conclude a measurement contract is, in my view, clear from the record. Before the commencement of the contract and in the appointment letter, Bateline explicitly stipulated that Nedtex would undertake to do the work on the basis of the measurement of works.

[28] Apart from this, it is crystal clear from the record that when Nedtex started to insist on payment, the engineer in the main contract was requested to mediate between Nedtex and Bateline.

[29] The evidence clearly establishes that a meeting took place between the Engineer, Nedtex, and Bateline. During this meeting, Nedtex was requested to submit their final

measurements for certification by the Engineer. Although Nedtex agreed to do so, they failed to comply; by the commencement of the trial in the Magistrates' Court, the measurements had still not been submitted by Nedtex.

[30] The fact that Nedtex did not protest at all at this meeting to submit the measurements for final certification is a clear indication that Nedtex realized that this contract was a measurement contract, and that final measurements needed to be certified by the engineer prior to payment.

[31] Bateline's defense that Nedtex must submit measurements is not a technicality, it's the fundamental payment mechanism of a measurement contract.

[32] In my view, the Magistrate erred with respect in a second respect as well. Within the context of construction law, there is a fundamental difference between an interim payment certificate and a final payment certificate.

[33] There is a wealth of authority³ that interim payment certificates are provisional and can be (and almost always are) adjusted with a final payment certificate. Even if an interim payment certificate is not disputed at the time of the payment thereof,

³ Intech Instruments v Transnet Limited t/a South African Port Operations (Case No. 1035/2018) ZASCA 113; Randcon (Natal) (Pty) Ltd v Florida Twin Estates (Pty) Ltd 1973 (4) SA 181 (D); Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)

the only payment certificate that is final and determinative of the contract price between the parties is the final payment certificate.

[34] Most relevant for this case, the Appellate Division ruled in *Thomas Construction (Pty) Ltd (in liquidation) v Grafton Furniture Manufacturers (Pty) Ltd*⁴ ruled that interim payment certificates merely constitute advanced payments against works that still had to be executed and completed and do not necessarily reflect what work had been completed. As the nature of an interim certificate is provisional or interim and may be subject to change, the amounts reflected therein are not necessarily payment certified for work actually done but rather advances on payments on account of the contract.

[35] Very little inference can consequently be drawn from the fact that interim payments had been rendered and some of the interem interim payments were paid by Bateline.

[36] Furthermore, in paragraph 6 of the Particulars of Claim, the Nedtex alleges the following:

"On or about August 2020, the plaintiff submitted a payment claim in the amount of R 914 116.60 relating to the services rendered, as described in paragraph 5 above. On or about the first and second defendants made payment in the amount of R 701 911.14 (seven hundred and one thousand and nine hundred and eleven rand and fourteen cents) to the plaintiff, thus leaving an amount of R 210 800.95 (two hundred and ten thousand eight hundred and ninety-five cents).

⁴ 1988 (2) SA 546 (A).

[37] Had the appointment letter been the basis of the calculation, the Nedtex would have been entitled to the following: R 841 267.55 (amount in the appointment letter) plus 15% VAT that is R 126 190.00 in other words a total amount of R 967 457.68. For some reason or another, Nedtex does not claim the amount of R 967 457.68, but claims instead R 914 116.60, that is R 53 341-08 less. This difference is nowhere explained in the record or the pleadings. In my view, it carries the strong implication that Nedtex submitted a claim based on quantities that differed from the quantities on which the contract price estimation as contained in the appointment letter, was based.

[38] The simple reality, however, is that it is a common cause between the parties that the final works were not measured nor certified by the engineer. Without such a certified measurement at the end of the contract, the final contract price cannot be determined.

[39] For all of the above reasons, I am of the opinion that the appeal should succeed.

The following order is accordingly made.:

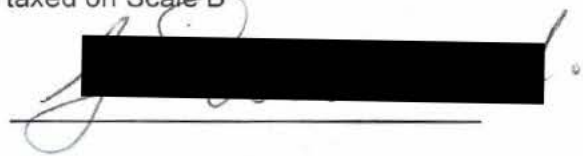
1. The appeal of the appellant is upheld.

2. The order of the Court *a quo* is substituted with the following order.

" (a) the claim of the plaintiff is dismissed.

(b) the plaintiff is to pay the costs of suit of the defendant."

3. The Respondent is ordered to pay the costs of the appeal, which costs are to be taxed on Scale-B



G J DIAMOND

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

I agree:



M NAUDE- ODENDAAL

JUDGE OF THE HIGH COURT OF SOUTH AFRICA.

LIMPOPO DIVISION, POLOKWANE.

APPEARANCES:

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INSTRUCTED BY: :CHUENE MAHLO
INCORPORATED
POLOKWANE

DATE OF HEARING: 22 AUGUST 2025.

DATE OF JUDGMENT: 9 DECEMBER 2025.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 9 DECEMBER 2025.